IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.216 OF 2006
IN
APPEAL FROM ORDER NO.1101 OF 2004

Anand Nilkanth Sabnis & Anr. ... Applicants

Vs.

Rajendra Satish Sabnis ... Respondent

Mr. Uday P. Warunjikar for the applicants.

Mr. A.S. Khandeparkar with D. Brijesh for the respondent.

CORAM : A.M. KHANWILKAR, J.

DATED : 13TH JULY, 2006.

P.C.:-

1. Heard counsel for the parties. Perused the relevant documents and pleadings on record.

2. The position which emerges is that the original business conducted in the suit premises by the appellants was of repair of electrical items. Court Receiver took possession of the suit premises and the business. Now the respondent has been appointed as agent of the Court Receiver as he was found to be the highest bidder. Obviously, the bidding was conducted on the assumption that the business which was conducted in the suit premises would be continued in the same name and purpose. The applicants rightly assert that it is not open for the respondent to start new business of sale and repairs of electronic items such as mobile phones. It is also seen from the record

that, in fact, the respondent was justly advised to apply to the Court Receiver to permit him to commence new business of sale and service dealership of mobile phones. That application was made to the Court Receiver on 29/8/2005. No formal decision was taken on the said application by the Court Receiver. Without waiting for such permission, the respondent started the new business in the suit premises regarding sale and service dealership of the mobile phones. The nature of change of business and the premises can be noted on the basis of the inventory report prepared by the Court Receiver at two different point of time. Obviously, the respondent has committed breach of the agency agreement.

3. However, the case of the respondent is that this business is incidental to the original business conducted in the suit premises of repair of electrical items. It is not possible to accept this submission. The business of sale and service dealership of mobile phones is independent and in addition to the original business of repairs of electrical items. In the circumstances, the report submitted by the Court Receiver dated 25/1/2006 will have to be accepted. However, it appears that the respondent, without realising the consequences of such change, has started the business of sale and service dealership of mobile phones. The respondent, who is present in the court through counsel submits that he will restore the suit premises in the same form and position as it was when the agency agreement was executed in his favour. In otherwords, the respondent undertakes to restore the name plate of “Vaishali T.V. Centre” on the suit premises and also confine the activity of

repairs of electrical items in the suit premises. That undertaking is accepted.

4. It will be, however, open to the respondent to apply to the Court Receiver for permitting him to start additional business which application will be decided by the Court Receiver on its own merits in accordance with law. It will be open to the Court Receiver to impose additional conditions in the event it is of the view that such additional business will not damage the suit premises. All questions in that behalf are kept open. The respondent shall forthwith restore the suit premises to its original position in the above terms and also display the board of Court Receiver in the suit premises.

5. It is made clear that the issue as to whether the respondent shall be required to contribute further amount for the benefit derived on account of new business of sale and service dealership carried on some time after September, 2005 till the same is discontinued in terms of this order, is left open to be considered in the appropriate proceedings.

6. Application is disposed of on the above terms. This order also disposes of the report of the Court Receiver dated 25/1/2006.

[A.M. KHANWILKAR, J.]